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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 28.07.2014

Pronounced on : 23.09.2014

+ MAC.APP. 1095/2012

UPSRTC

..... Appellant

Through Ms.Garima Prashad, Advocate

versus

RATAN PAL & ANR

..... Respondent

Through Mr.S.K.Vashistha, Advocate for R-1
and R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The present appeal is filed seeking to challenge the impugned Award dated 05.06.2012. The claim petition was filed by the respondents stating that their son Gajender Singh while coming from Ghaziabad to Delhi on a motorcycle at Gyani Border, Sahibabad, Ghaziabad, was hit by a bus stated to be driven at a high speed, rashly and negligently belonging to the appellants. The said Gajender Singh died on the spot.

2. Based on the pleadings of the parties following issues were framed:-

“1.Whether the petition is not maintainable for want of jurisdiction? OPP

2.Whether the deceased Sh.Gajender Singh suffered fatal injuries in the accident occurred on 10.09.2008 due to rash and negligent driving of vehicle no.UP-11T-2642 (UP roadways Bus) being driven by respondent No.1? OPP.

3.Whether the petitioners are entitled for any compensation, if so, to what amount and from whom? OPP.

4. Relief.”

3. On issue No.1 the Tribunal held that the Court has the territorial

jurisdiction to decide the matter as the residence of the respondents is in Delhi. Issue No.2 was decided in favour of the respondents holding that the late Shri Gajender Singh died in the accident which took place due to the rash and negligent driving of the appellant.

4. On issue No.3 the Tribunal awarded a sum of ₹4,36,800/- for loss of dependency, ₹25,000/- was awarded under the head love and affection, ₹10,000/- for loss of estate and ₹5,000/- for funeral expenses. A total compensation of ₹4,76,800/- was awarded to the respondents. Interest @ 7.5% per annum was also awarded from the date of filing of the petition till realization.

5. Learned counsel appearing for the appellant has urged that firstly the Tribunal has erroneously taken the minimum wages for Delhi whereas the deceased Shri Gajender Singh was actually residing in U.P. Hence, it is submitted that the minimum wages as applicable in UP ought to have been applied. It is secondly submitted that on account of future prospects 30% has been added. She submits that this is contrary to various judgments of the Supreme Court.

6. As far as the first argument is concerned, the Tribunal noted that PW-1, namely, respondent No.1 in his evidence has stated that the deceased was running a photo studio and was earning ₹10,000/- per month. However, keeping in view the fact that PW-1 failed to place on record any material to show the amount the deceased was earning this figure of ₹10,000/- per month was discredited. The Tribunal, however, assessed the income of the deceased to be ₹4,000/- per month. The Tribunal noted that minimum wages at the time of accident for unskilled workman were ₹3,700/- per

month and based on the same the Tribunal assessed the earning of the deceased @ ₹4,000/- per month.

7. There is no merit in the submission of learned counsel for the appellant that the deceased was carrying on work at a place outside Delhi, namely, at Ghaziabad. In fact PW-3 Sh.Satish Kumar in his evidence has stated that the deceased was residing in Delhi. PW-1 i.e. respondent No.1 was cross-examined by the counsel for the appellant. In his cross-examination he has stated as follows:-

“My deceased son was a photographer at the time of accident. He was having his own shop. I do not remember the address of the shop of my son. However, the shop was situated in Delhi. I do not remember in which colony the shop was situated.”

8. There is no reason to disbelieve his evidence. On the other hand it is the own plea of the appellant that the deceased was a photographer. The admitted fact is that it is apparent from the evidence recorded by the Tribunal that respondents No.1 and 2 were residing in Delhi. Given these facts there is no reason to disbelieve that the deceased was working for gain in Delhi.

9. Regarding the computation of the wages of the deceased @ ₹4,000/-, I am informed at the Bar that the wages for an unskilled workman at that relevant time was ₹3683/- whereas for skilled workman it was ₹4107/-. It cannot be ignored that there is no evidence on record to show that the deceased was not a skilled photographer.

10. Keeping in view these facts, assessment of wages @ ₹4,000/- per month by the Tribunal cannot be faulted with.

11. Coming to the next submission of the learned counsel for the appellant regarding enhancement of 30% in the annual income for future

prospects, I can take judicial note of the fact that minimum wages for an unskilled worker in 2002 were Rs. 2679.70/- P.M. and in 2012 were Rs.7020/- P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

12. In case of *Rajesh & Ors. vs. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

13. In the case of *Smt.Savita vs. Bindar Singh & Ors.*, (2014) 4 SCC 505, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of *V.Mekala vs. M.Malathi & Anr.*, 2014 ACJ 1441, the Supreme Court in the case of a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

14. In view of the above judgments and in the facts and circumstances of this case, the Tribunal was justified in adding 30% to the income of the deceased based on future prospects/due to price rise.

15. There is no merit in the submission of the learned counsel for the appellant. The present appeal is dismissed.

16. As per the interim order dated 09.10.2012 of this Court, the appellant was directed to deposit the entire award amount with accumulated interest. Further, 50% of the award amount was directed to be released in favour of the Respondents no. 1 and 2 in terms of orders passed by the Claims Tribunal. The remaining 50% of the amount was directed to be held in a fixed deposit in a nationalized bank.

17. In view of the above order, the awarded amount lying with the bank along with accumulated interest be released to the claimants/respondents

proportionately as per the directions in the Award.

18. In case any statutory amount was deposited by the appellant at the time of filing of the appeal, the same may be refunded to the appellant.

**JAYANT NATH
(JUDGE)**

SEPTEMBER 23, 2014